

NBCUniversal

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April 13, 2012

By Hand Delivery

General Counsel's Office
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6544

Dear Madam or Sir:

On behalf of NBCUniversal Media, LLC ("NBCUniversal") and MSNBC, we are responding to the above-referenced complaint filed by David H. Zisser, which alleges that MSNBC violated the Federal Election Campaign Act of 1971. Specifically, Mr. Zisser contends that MSNBC violated 2 U.S.C. § 441b, which prohibits corporate contributions and expenditures in connection with a federal election, in its broadcast of *The Ed Show* on March 16, 2012.

The broadcast in question did not violate the Act because it falls squarely within the "press exemption" to Section 441b. The Act specifically exempts from the definition of "expenditure": "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. § 431(9)(B)(i); see also *Citizens United v. Federal Election Comm'n*, 130 S.Ct. 876, 905 (2010) ("Media corporations are now exempt from § 441b's ban on corporate expenditures."). Federal Election Commission regulations similarly exempt from the definitions of contribution and expenditure "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), website, newspaper, magazine, or other periodical publication ... unless the facility is owned or controlled by any political party, political committee, or candidate." 11 C.F.R. §§ 100.73 and 100.132.

Entities that produce and disseminate broadcast programs that consist of news stories, commentaries or editorials discussing political issues, including federal elections and election campaigns, qualify for the press exemption. See, e.g., Federal Election Commission, Advisory Opinion 2005-19 at 4; Federal Election Commission, Advisory Opinion 2004-07 at 4-5.

MSNBC is a cable television network that delivers breaking news, in-depth coverage, and news commentary 24 hours a day. MSNBC therefore is a press entity as described by the Act and regulations. MSNBC was acting as a press entity in its broadcast of the challenged program. As Mr. Zisser's complaint acknowledges, *The Ed Show* is a news commentary program. The March 16, 2012 edition of the program challenged in the complaint included coverage of, and


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commentary about, topics such as women's health, the presidential campaign, a campaign speech that day by President Obama, and the United States economy.

MSNBC is owned by NBCUniversal, a global media company. Neither MSNBC nor NBCUniversal is owned by a political party, political committee, or candidate. Accordingly, the press coverage of federal election campaigns by MSNBC is exempt from restrictions of the Act.

Accordingly, NBCUniversal respectfully submits that Mr. Zisser's complaint is without merit and should be summarily dismissed.

Respectfully submitted,


Margaret Tobey
Vice President, Regulatory Affairs
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Erik Bierbauer
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FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Entity/Treasurer
FAX (202) 219-3923

MUR # 6544

NAME OF COUNSEL: Erik Bierbauer

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

4/13/12
Date

Monica Melend
Respondent/Agent -Signature

Vice President
Title (Treasurer/Candidate/Owner)

NAMED RESPONDENT: MSNBC

MAILING ADDRESS: 30 Rockefeller Plaza
(Please Print)

NY NY 10112

TELEPHONE- HOME _____

BUSINESS (_____) _____

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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